

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKAKO HIROSE, HIROMI WADA, YASUNORI TANAKA,
ATSUNOBU KATO, MASAHARU NAKATSUCHI, and
KEIZABURO SASAKI

Appeal 2007-3284
Application 09/622,656
Technology Center 2100

Decided: December 4, 2007

Before HOWARD B. BLANKENSHIP, ST. JOHN COURTENAY III, and
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-6. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. INVENTION

1 The disclosed invention is generally directed to a system and method for transmitting messages between a server and a client. (Spec. 1.) More particularly, Appellants' invention provides for a system in which a client system receives a notification of a message from a server unit and requests transmission of the message from the server unit based on the notification. (*Id.* 3.)

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows:

1. A message delivery system having a client system acquiring a delivery message from a server unit by requesting to transmit the delivery message stored in the server unit in compliance with a notification from the server unit,

wherein the client system includes a received message storing means for storing delivery message information received from the server unit, and an instruction and message acquisition requesting means for informing the server unit of a succeeding message acquiring request, if a succeeding message is present, and a process instructing request for the delivery message whose reception is completed when reception of the delivery message from the server unit is completed, and

wherein the server unit includes a message start notification means for sending said notification to the client system in response to arrival of the succeeding message at the server, a delivery message storing means for storing the delivery message to be transmitted to the client system, and message processing means for transmitting a succeeding message stored in the delivery message storing means to

the client system in compliance with a request from the client system and then processing the delivery message whose reception is completed.

C. REJECTION

Claims 1-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,314,454 (“Wang”) and U.S. Patent No. 6,175,858 (“Bulfer”).

II. CLAIM GROUPING

1 “When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(vii) (2005).¹

Here, Appellants argue claims 1-6 as a group. (App. Br. 4-6). We select claim 1 as the sole claim on which to decide the appeal of the group.

III. ISSUES

¹ We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

“Rather than reiterate the positions of parties *in toto*, we focus on the issue therebetween.” *Ex Parte Filatov*, No. 2006-1160, 2007 WL 1317144, at *2 (BPAI 2007). The question of obviousness is “based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently” *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966); *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613 (Fed. Cir. 1995)).

Appellants dispute the Examiner’s finding that claim 1 would have been obvious to one of ordinary skill in the art over Wang and Bulfer and assert that Bulfer fails to disclose “sending said notification to the client system in response to arrival of the succeeding message at the server” as recited in claim 1. (App. Br. 5.)

In response, the Examiner states that Bulfer discloses “the step of sending notification to the client system (i.e., user)” in which “the notification method . . . includes paging the user or calling the user at a designated number” as well as “leaving a notification message to the user in the mailbox of the source system (col. 2, lines 53-55) . . .” (Ans. 6.) We agree. Bulfer discloses the arrival of a message (i.e., “after retrieving a new message” (col. 2, ll. 49-50)) and, in response, notifying “the user of the new messages.” (Col. 2, ll. 50-51.) Contrary to Appellants’ assertion, Bulfer discloses sending a notification to a client system in response to the arrival

of the message at the server by notifying the user of new messages after the new messages are received.

In addition, Wang discloses that a “receiving account 740 logs in to server 340 and is notified that it has mail waiting. At the request of receiving account 740, mail server 340 forwards the certified email message to receiving account 740.” (Col. 6, ll. 51-55.) Because the receiving account 740 (i.e., “client system”) is “notified that it has mail waiting” and the message is forwarded from the mail server 340, we find that the notification is sent to the client system in response to the arrival of the message at the server. Clearly, in the absence of the arrival of the message at the server, there would be no message for the client and hence no notification of the presence of the message. Hence, Wang, like Bulfer, discloses sending a notification to the client system (i.e., “receiving account 740”) in response to arrival of the message at the server (i.e., mail server 340).

Appellants further assert that Bulfer fails to disclose that the client system requests “the delivery message stored in the server unit *in compliance with a notification from the server unit.*” (Reply Br. 2.) We use a standard definition of the term “in compliance with” using the plain meaning of the term to mean “in conformity or in agreement with.” Wang discloses that “[a]t the request of the receiving account 740, mail server 340 forwards the certified email message to receiving account 740.” (Col. 6, ll. 53-55.) As such, we find Wang discloses that the client system (i.e.,

receiving account 740) requests the message in compliance with the notification.

Appellants also argue that Bulfer discloses a user and that a user is distinct from a “client system” as recited in claim 1. In response, the Examiner states that “the user . . . in the Bulfer’s system has capabilities of requesting, acquiring and storing messages (col. 3, lines 21-36), i.e., it is a client system as claimed in claim 1.” (Ans. 6.) We agree. “[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). Using a broad but reasonable interpretation, a “client system” includes any system of a user of services. The user in the Bulfer reference includes an apparatus that receives a notification from the agent that notifies the user “by paging the user or calling the user at a designated number.” Alternatively, the agent 12 may also leave a notification message in each of the polled mailboxes.” (Col. 2, ll. 52-55.) In either case, the apparatus constitutes a “client system” in that the user’s apparatus uses a messaging service from the server.

We conclude Appellants have failed to demonstrate the Examiner erred in rejecting claim 1. Therefore, we affirm the rejection of claim 1, and of claims 2-6, which fall therewith.

IV. ORDER

In summary, the rejection of claims 1-6 under § 103(a) is affirmed.

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“Any arguments or authorities not included in the brief or a reply brief filed pursuant to [37 C.F.R.] § 41.41 will be refused consideration by the Board, unless good cause is shown.” 37 C.F.R. § 41.37(c)(1)(vii).

Accordingly, our affirmance is based only on the arguments made in the briefs. Any arguments or authorities omitted therefrom are neither before us nor at issue but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1367 (Fed. Cir. 2004) (“[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.”)

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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